

ARKANSAS POWER & LIGHT CO.

NOVEMBER 4 (legislative day, OCTOBER 25), 1943.—Ordered to be printed

Mr. WILSON, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 1555]

The Committee on Claims, to whom was referred the bill (H. R. 1555) for the relief of Arkansas Power & Light Co., having considered the same, report favorably thereon, without amendment, and recommend that the bill do pass.

The facts will be found fully set forth in House Report No. 691, Seventy-eighth Congress, first session, which is appended hereto and made a part of this report.

[H. Rept. No. 691. 78th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 1555) for the relief of Arkansas Power & Light Co., having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 6, after the figures "\$3,574.81" strike out period and insert comma, then strike out words "Such sum represents" and insert in lieu thereof the words "in full settlement of all claims against the United States for".

At end of bill strike out period and add:

"*Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

The purpose of the proposed legislation is to pay to Arkansas Power & Light Co., Little Rock, Ark., the sum of \$3,574.81, in full settlement of all claims against the United States for the value agreed upon by the company and representatives of the Quartermaster Corps, United States Army, of facilities and equipment for the distribution of electric power which were installed by the company at former Camp Pike (now Camp Robinson), Little Rock, Ark., when such camp was a National Guard camp, under an agreement that such facilities were to remain the property of the company, and which were taken over and requisitioned by the United States on November 28, 1940.

STATEMENT OF FACTS

Sometime after the close of World War I the electric lighting system at Camp Pike, Little Rock, Ark., was salvaged and the Arkansas National Guard thereafter occupied the camp site under a revocable license granted by the Secretary of War on November 30, 1922. As the State of Arkansas did not have the necessary funds available to install an electrical distribution system, the Arkansas Power & Light Co., which was to furnish the power and light for the camp, agreed to install the system without charge to the State of Arkansas. So far as the record discloses, no written agreement was entered into between the State and the power company, but it appears to have been understood by officials of both of these interested parties that the equipment thus installed was merely loaned to the State of Arkansas, and remained the property of the power company, which had the authority to remove it or dispose of it at any time. This is evidenced by a letter written by the adjutant general of Arkansas to the power company under date of December 6, 1940, a copy of which is included in the War Department file, in which it is stated that "this equipment belongs to you and you should have the right to either remove it or dispose of the equipment as you see fit." It appears that the power company officials overlooked the fact that some arrangement should have been made with the Federal Government in order to retain ownership of the equipment, which it valued at \$4,205.66 at the time it was installed.

On November 28, 1940, the license authorizing the State of Arkansas to use the military reservation was revoked by the Secretary of War in order that the United States might regain the exclusive use of it in the national defense program. It appears that the equipment installed by the power company was physically incorporated in the construction of the electrical distribution system for the new Camp Joseph T. Robinson constructed on the site of Camp Pike in the fall of 1940. It also appears that the constructing quartermaster in charge of construction at Camp Robinson and the contractors, Black & Veatch of Kansas City, Mo., estimated the value of the property previously installed by the power company to be \$3,574.81 at the time it was incorporated in the new system, and agreed that it would be much cheaper for the Government to use it than to replace it. In a letter to the power company under date of August 25, 1942, the contractor stated "if we had considered that there would be any question about reimbursement, we would not have included the property in the new system."

The acting district engineer, United States Engineer office, Little Rock, in his report submitted on April 9, 1943, stated:

"* * * based upon the estimated cost of \$4,205.66, as shown in the inventory and a field inspection, the depreciated value of \$3,574.81, as claimed by the power company as representing just compensation, appears reasonable to this office.

"* * * It is the conclusion of this office that the Arkansas Power & Light Co. installed the electrical distribution at former Camp Pike, now Camp Joseph T. Robinson, in good faith, and that from an equitable viewpoint the company is entitled to compensation for the facilities which it installed at its expense. The bill (H. R. 1555) appears to be meritorious."

After considering the record in connection with the bill the Chief of Engineers commented as follows:

"It is recommended that the measure be reported to Congress with favorable recommendation."

The War Department favors enactment of the bill, and concludes its report by stating:

"It is the view of the War Department that the electrical distribution system constructed by the Arkansas Power & Light Co. at Camp Pike at its own expense had a fair and reasonable value of \$3,574.81 at the time the War Department resumed control of the camp site in 1940 and incorporated the system in the electrical distribution system of Camp Robinson, and that in justice and equity the United States should pay the power company that amount. The War Department, therefore, recommends that favorable consideration be given to the proposed legislation."

Attention is also invited to a report from the Comptroller General which concludes:

"Taking the foregoing into consideration, it may be said that while under the general rule with respect to ownership of improvements to real property made by or under authority of a licensee and left on the premises upon termination of a license there would be no legal liability upon the Government to pay for such

improvements, the claim for the value of such improvements does have some merit, since the Government obtained the improvements without paying therefor."

Your committee concur in the view of the War Department and the Comptroller General, and, therefore, recommend favorable consideration of the proposed legislation.

Appended hereto are the reports from the War Department and the Comptroller General, together with other pertinent evidence, all of which is made a part of this report. Your committee have in their files detailed statements, including lists and values of all articles and items making up the claim, and including maps of the property, but they are considered too voluminous to include herein and would only burden this report.

WAR DEPARTMENT,
Washington, D. C., June 9, 1943.

Hon. DAN R. McGEHEE,
Chairman, Committee on Claims,
House of Representatives.

DEAR MR. McGEHEE: The War Department favors the enactment of H. R. 1555, Seventy-eighth Congress, a bill which would authorize and direct the Secretary of the Treasury to pay to the Arkansas Power & Light Co., of Little Rock, Ark., the sum of \$3,574.81 in full settlement of all its claims against the United States for "facilities and equipment for the distribution of electric power which were installed by the company at former Camp Pike (now Camp Robinson), Little Rock, Ark."

There is included in the War Department file a report made by the acting district engineer, Little Rock, Ark., based upon information obtained from the files of the Arkansas National Guard and the Arkansas Power & Light Co., which files, it is stated, appear "to be the only information available on the subject." It appears that some time after the close of World War I the electric lighting system at Camp Pike was salvaged and that the Arkansas National Guard thereafter occupied the camp site under a revocable license granted by the Secretary of War on November 30, 1922. As the State of Arkansas did not have the necessary funds available to install an electrical distribution system, the Arkansas Power & Light Co., which was to furnish the power and light for the camp, agreed to install the system without charge to the State of Arkansas. So far as the record discloses, no written agreement was entered into between the State and the power company, but it appears to have been understood by officials of both of these interested parties that the equipment thus installed was merely loaned to the State and remained the property of the power company, which had the authority to remove it or dispose of it at any time. This is evidenced by a letter written by the Adjutant General of Arkansas to the power company under date of December 6, 1940, a copy of which is included in the War Department file, in which it is stated that "This equipment belongs to you and you should have the right to either remove it or dispose of the equipment as you see fit." It appears that the power company officials overlooked the fact that some arrangement should have been made with the Federal Government in order to retain ownership of the equipment, which it valued at \$4,205.66 at the time it was installed.

On November 28, 1940, the license authorizing the State of Arkansas to use the military reservation was revoked by the Secretary of War in order that the United States might regain the exclusive use of it in the national defense program. It appears that the equipment installed by the power company was physically incorporated in the construction of the electrical distribution system for the new Camp Joseph T. Robinson constructed on the site of Camp Pike in the fall of 1940. It also appears that the constructing quartermaster in charge of construction at Camp Robinson and the contractors, Black & Veatch, of Kansas City, Mo., estimated the value of the property previously installed by the power company to be \$3,574.81 at the time it was incorporated in the new system, and agreed that it would be much cheaper for the Government to use it than to replace it. In a letter to the power company under date of August 25, 1942, the contractor stated "if we had considered that there would be any question about reimbursement, we would not have included the property in the new system."

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After considering the record in connection with the bill, the Chief of Engineers commented as follows: "It is recommended that the measure be reported to Congress with favorable recommendation."

It is the view of the War Department that the electrical distribution system constructed by the Arkansas Power & Light Co. at Camp Pike at its own expense had a fair and reasonable value of \$3,574.81 at the time the War Department resumed control of the camp site in 1940 and incorporated the system in the electrical distribution system of Camp Robinson, and that in justice and equity the United States should pay the power company that amount. The War Department, therefore, recommends that favorable consideration be given to the proposed legislation.

The fiscal effect of the bill is manifest.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

WASHINGTON, February 6, 1943.

HON. DAN R. MCGEHEE,
*Chairman, Committee on Claims,
House of Representatives.*

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of January 30, 1943, acknowledged February 1, requesting a report on bill H. R. 1555, Seventy-eighth Congress, entitled "A bill for the relief of Arkansas Power & Light Co.," which bill provides, as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Arkansas Power and Light Company, Little Rock, Arkansas, the sum of \$3,574.81. Such sum represents the value, agreed upon by the company and representatives of the Quartermaster Corps, United States Army, of facilities and equipment for the distribution of electric power which were installed by the company at former Camp Pike (now Camp Robinson), Little Rock, Arkansas, when such camp was a National Guard camp, under an agreement that such facilities and equipment were to remain the property of the company, and which were taken over and requisitioned by the United States on November 28, 1940."

The records of this office disclose that on November 30, 1922, the State of Arkansas was granted a license, revocable at will by the Secretary of War, to occupy and use in connection with the organization and training of its National Guard, the Government property at Camp Pike, including certain buildings therein described. The license provided, among other things, that all the utilities, buildings, roads, and walks on the reservation, except such utilities and buildings as might be sold to the State and except certain reserved railroad tracks therein referred to should be maintained and kept in thorough repair by the State at all times and should, upon revocation or relinquishment of the license, be returned to the United States, without alteration, in as good condition as when received, fair wear and tear and damage by the elements excepted. Subsequently, the Congress enacted a joint resolution, approved May 29, 1924, 43 Statutes 244, providing as follows:

"That the Secretary of War be, and he is hereby, authorized to permit the State of Arkansas to erect, maintain, and use such permanent buildings, rifle ranges, and utilities at Camp Pike, Arkansas, within the areas most suitable, as are necessary for the use and benefit of the National Guard of the State of Arkansas: *Provided*, That no expense shall accrue to the United States by reason of this authorization."

It appears further that during the occupancy of the site by the National Guard the distribution system covered by the claim was installed by the claimant without charge reportedly due to the lack of sufficient State funds available for that purpose; that material was added to the system from time to time by the claimant and from funds furnished by the State; and that upon revocation of the license on

November 28, 1940, the subject claim was filed, it being contended by the claimant that the system was installed with the understanding that it was to remain the property of the claimant and that said claimant would be authorized to remove or dispose of the system at any time.

The claim was disallowed for the stated reason that there was no evidence furnished that the distribution system was installed at the request of the United States; that the general rule in the case of improvements affixed to the land by a licensee under a revocable license is that said improvements may not be removed by the licensee except by prior agreement with the licensor; that the claimant had knowledge of the act of May 29, 1924, quoted above; and that originally the claimant apparently never expected to be paid for the system, at least not by the United States.

The settlement disallowing the claim was sustained by decision of June 29, 1942, to the claimant, wherein were set forth the reasons why there was no legal basis for allowance of the claim.

Thereafter, the claimant by letter of September 1, 1942, requested reconsideration of the decision of June 29, 1942, referred to above, and by letter of September 18, 1942, said claimant was advised that nothing in its letter or enclosures could be regarded as requiring or authorizing any change or modification in the conclusion theretofore reached to the effect that there appeared no proper legal basis for allowance of its claim.

While it is stated in the bill that the installation of the facilities and equipment was made under an agreement that such facilities and equipment were to remain the property of the Arkansas Power & Light Co., insofar as this office is advised no such fact has been established. The only evidence of any such agreement submitted to this office was a statement by the claimant to that effect in which it was stated, also, that under that agreement the claimant was authorized to remove or dispose of the system at any time. However, the record does disclose that the United States became possessed—upon revocation of the license to the State of Arkansas—of certain improvements, which, as contended by the company, may have been constructed and installed by it with the understanding that such improvements should remain the property of said company.

Taking the foregoing into consideration, it may be said that while under the general rule with respect to the ownership of improvements to real property made by or under authority of a licensee and left on the premises upon termination of a license there would be no legal liability upon the Government to pay for such improvements, the claim for the value of such improvements does have some merit, since the Government obtained the improvements without paying therefor.

Sincerely yours,

LINDSAY C. WARREN,
Comptroller General of the United States.

STATE OF ARKANSAS,
County of Pulaski:

R. E. Ritchie on oath states:

My name is R. E. Ritchie. I reside in Little Rock, Ark. I am vice president of Arkansas Power & Light Co. and division manager of all its Little Rock division, which includes all of Pulaski County and several other counties in the central part of the State. I have been engaged in such capacities and in others by Arkansas Power & Light Co. for approximately 20 years.

The total amount of the claim which is the subject of H. R. 1555, by Mr. Norrell, is \$3,574.81 as evidenced by a detailed statement which was prepared at my request and under my direct supervision, and which I have carefully examined, checked, and verified as to its correctness, the detailed statement being attached hereto and made a part of this affidavit. The claim is for personal property in the form of electric distribution lines and equipment owned by Arkansas Power & Light Co., which at the request of, and under an agreement with, the construction quartermaster, Captain Reed, of the United States Army, and Mr. Tom Veatch, consulting engineer in the construction of Camp Joseph T. Robinson near Little Rock, Ark., was appropriated to the use of and taken over by the United States in the construction of Camp Joseph T. Robinson in the latter part of 1940; and for which property the Arkansas Power & Light Co. has not been compensated. These items of personal property comprising the electric distribution lines and equipment belonging to Arkansas Power & Light

Co. were in place on the camp site when appropriated and taken over by the Government in accordance with the above-mentioned request and agreement with the construction quartermaster and the consulting engineers; and the request of the construction quartermaster and consulting engineers in charge of the camp construction was made to Arkansas Power & Light Co. at the time the company was arranging to remove its property. In compliance with this request and the understanding that the company would receive compensation therefor, the present fair value of the property was determined and agreed to be \$3,574.81. Upon instruction of the construction quartermaster at Camp Joseph T. Robinson and the Quartermaster General's office of Washington, a bill was rendered on the basis of the agreed amount and submitted to the construction quartermaster, Camp Joseph T. Robinson.

At the time Arkansas Power & Light Co. had arranged to remove its property neither the construction quartermaster nor any other agent acting for the Government voiced any objections to the company's intention to remove its property from the camp site. Furthermore, the company would have proceeded with the removal if it had not been for the fact that the request and agreement to leave it in place were made to the company by the Government acting through the construction quartermaster and consulting engineers in charge of the construction of Camp Robinson. The reasons advanced by the construction quartermaster and consulting engineers why the Government wanted the company's property left in place, and which the company accepted in a spirit of cooperation in the camp construction, were that the property owned by the company and already in place, could be utilized by the Government in the electric distribution system to be constructed in Camp Robinson; and that if the company would not remove its property the Government would benefit in saving a substantial sum in its construction costs. The results of these transactions so far have been that the Government has received the benefit of the savings in construction costs together with the company's property, and Arkansas Power & Light Co. has been deprived of its property without receiving any compensation therefor.

The conditions under which these items of personal property belonging to Arkansas Power & Light Co., and which are now the subject matter of H. R. 1555, were placed upon the site now occupied by Camp Joseph T. Robinson, are as follows:

Prior to the time Camp Joseph T. Robinson was laid out and built, part of the area included in Camp Robinson was the area of the old Camp Pike site. About 1922 the old Camp Pike site with the then existing buildings, and improvements, was acquired by the State of Arkansas from the United States, to be used as a camp for the Arkansas National Guard's training. There were some electric lines and equipment on this camp site when the State of Arkansas acquired it from the United States. The electric lines and equipment in place at Camp Pike at the time the State of Arkansas acquired the property did not belong to the Arkansas Power & Light Co., and these lines and equipment do not constitute any part of the company's claim. I have been informed the State of Arkansas held and occupied the old Camp Pike site under a revocable lease agreement with the United States, and that the United States exercised its right to revoke the agreement and repossess the Camp Pike site just prior to the beginning of the construction of Camp Robinson. The State held the Camp Pike site under the revocable lease agreement from about 1922 to 1940.

About 1925 and during subsequent years, while the State of Arkansas held the Camp Pike site, the Arkansas State Military Department requested Arkansas Power & Light Co. to make, install, and maintain certain electric distribution lines and equipment in the old Camp Pike area for the accommodation and use of the State's National Guards. These lines and equipment, which are now the subject of H. R. 1555, were put up and maintained under the specific understanding and agreement with the State of Arkansas acting through its adjutant general of the Arkansas National Guards, that all such electric lines and equipment so installed and maintained for the accommodation and use of the Arkansas National Guards were and always should remain and be the personal property of Arkansas Power & Light Co.; and that Arkansas Power & Light Co. retained and had the right to remove its property at any time. The amount of this claim and the itemized list attached hereto include only the items of personal property which Arkansas Power & Light Co. erected and maintained on the old Camp Pike site (now included in Camp Robinson) for the accommodation and use of Arkansas National Guards.

These electric lines and equipment so erected and maintained for the Arkansas National Guards never did lose their identity as personal property, and it was

never intended by the State of Arkansas and Arkansas Power & Light Co. that they should. Such lines and equipment were and have always been treated as personal property by the company and the State. In Arkansas all of our electric lines and equipment are classified under law as personal property. The State levies taxes on them as personal property, and such property in this State never becomes part of the real property upon which it is located. The very nature of such electric lines and equipment removes them from the classification of a permanent improvement to the land, or as a permanent fixture to any building or structure upon the land. Their removal at any time would not have damaged the land or any building thereon.

To assist the committee in its deliberations on this resolution, I offer herewith copies of certain correspondence between Arkansas Power & Light Co. and various agents of the United States and State of Arkansas, which pertain to the subject matter of the resolution. These are true and compared copies of the original letters. I also offer herewith a map in the form of a blueprint in two parts, on which are designated in orange color, Arkansas Power & Light Co.'s electric lines and equipment which were appropriated and taken over by the United States, and which constitute the detailed statement of the claim.

R. E. RITCHIE.

Subscribed and sworn to before me, a notary public, in and for the State of Arkansas, county of Pulaski, this 1st day of May 1943.

[SEAL]

JOHN W. LEE, *Notary Public.*

My commission expires April 1, 1946.



